IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.2305 of 2006**

DATE OF DECISION: July 25, 2006

SARDARA SINGH ...PETITIONER

VERSUS

FINANCIAL COMMISSIONER (APPEALS-I), PUNJAB AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MRS. JUSTICE NIRMAL YADAV.

PRESENT: MR. MANISH KUMAR SINGLA, ADVOCATE
FOR THE PETITIONER.
MR. BIPAN SHARMA, ADVOCATE
FOR RESPONDENT NO.5.

ASHUTOSH MOHUNTA, J.

The petitioner Sardara Singh and Parkash Singh respondent No.5 belong to village Ramgarh alias Manda, Tehsil and District Roopnagar and are contestants for the newly created post of Harijan Lambardar. The petitioner is 55 years old and has retired from Army from the rank of Subedar. He is 9th pass. Respondent No.5 is aged 40 years. He is matric pass and sells milk. Naib Tehsildar, Morinda, recommended the case of the petitioner for appointment as Lambar on the ground of his being an ex-serviceman. However, the Assistant Collector 2nd Grade, Roopnagar, did not concur with his recommendation as according to him, the petitioner was not physically fit as he had suffered two heart attacks and was an old aged person. He recommended the name of respondent No.5, as he was a young man of 40 years and the entire village Panchayat as well as Lambardar Deh alongwith large number of villagers had recommended his candidature for the post. The A.C. Ist grade disagreed with the recommendation made by the A.C. 2nd Grade and he recommended the name of the petitioner for

appointment as Lambardar. However, after considering the claims of both the candidates, the District Collector rejected the claim of the petitioner and ordered the appointment of respondent No.5 as Lambardar of the village vide order dated 25.11.2002 (Annexure P6). According to the District Collector, besides being an aged and sick person, the petitioner had taken grant under the Shagun Scheme by making false statement. The appeal filed by the petitioner was accepted and the order passed by the District Collector was set aside by the Commissioner (Appeals), Patiala Division, and he ordered the appointment of the petitioner in place of respondent No.5 as Harijan Lambardar, vide order dated 5.9.2003 (Annexure P9). In revision filed by respondent No.5, the Financial Commissioner (Appeals-I), Punjab (respondent No.1) set aside the order passed by the Commissioner (respondent No.2) and ordered the appointment of respondent No.5 as the Harijan Lambardar vide order dated 7.11.2005 (Annexure P11). Now in the present petition the petitioner has challenged the order passed by the Collector dated 25.11.2002 (Annexure P6) and the order passed by the Financial Commissioner dated 7.11.2005 (Annexure P-11).

It has been contended by the learned counsel for the petitioner that the District Collector as well as the Financial Commissioner had erred in rejecting the claim of the petitioner, simply because he was an aged person as compared to respondent No.5, and also that he had taken the grant of Rs.5100/- under the Shagun Scheme on the marriage of his daughter. The petitioner being an ex-serviceman having excellent record of 16 years of military service, was more meritorious candidate than respondent No.5. The amount of Shagun Scheme, which had inadvertently been taken by him under mistaken belief, had been returned by him suo motto and thus no

adverse notice ought to have been taken by the District Collector and the Financial Commissioner while rejecting his claim to the post of Harijan Lambardar.

The contentions raised by the learned counsel for the petitioner have vehemently been controverted by Mr. Bipan Sharma, learned counsel appearing on behalf of the caveator-respondent No.5 According to the learned counsel, merely because the petitioner had served in the Army for 16 years does not make him meritorious as compared to the candidate of respondent No.5. He contends that the petitioner had returned the amount illegally received by him under the Shagun Scheme by preparing false documents, only when he faced the threat of action against him. Otherwise also the entire Panchayat of the village and large number of inhabitants of the village besides the Lambardar Deh and supported the appointment of respondent No.5 to the post of Lambardar. It has also been contended by him that in Lambardari matters the higher authorities cannot upset the decision taken by the Collector unless the order passed by the District Collector is perverse and illegal. In view of this matter, the Commissioner (respondent No.2) had erred in setting aside the order passed by the District Collector appointing respondent No.5 to the post of Lambardar.

We have heard the learned counsel for the parties and perused the case file.

We are of the considered opinion that by now it is well accepted principle that the order of District Collector with regard to the appointment of Lambardar ought not ordinarily be interfered with until and unless there is some perversity or serious shortcoming in it. If proper procedure has been followed and the Collector has taken into account all the

evidence placed before him, the choice made by the Collector should not be upset by the appellate authority merely on the ground of a candidate being more meritorious. In the present case proper procedure was followed by the Collector while ordering appointment of respondent No.5 to the post of Lambardar. In the case reported as *Sardool Singh* vs. *The Financial Commissioner, Appeals-I, Punjab, and others* 2000(2) PLJ 469, it has been held by a Division Bench of this Court that selection of Lambardar has to be made by the Collector. Once selection has been properly made by the Collector, the higher authorities cannot interfere therein unless the order passed by the Collector was perverse or contrary to law. In the present case, it has nowhere been held by the Commissioner while setting aside the order passed by the Collector that it was perverse or contrary to law.

Still further, we are of the considered opinion that the Commissioner had ignored the important factors like bad health, old age, little support and the stigma of doubtful integrity while ordering the appointment of the petitioner to the post of Lambardar. The District Collector as well as the Financial Commissioner have rightly rejected the claim of the petitioner and appointed respondent No.5 to the post of Lambadar.

Consequently, there is no merit in this petition. It is, accordingly, dismissed. There shall be no order as to costs.

(ASHUTOSH MOHUNTA)
JUDGE

July 25, 2006
Gulati

(NIRMAL YADAV)
JUDGE